

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RECEIVED
SDNY DISTRICT OFFICE
2016 JUN 22 AM 9:24

Robert Derek Lurch Sr.

Write the full name of each plaintiff.

16 CV 2517

(Include case number if one has been assigned)

-against-

AMENDED
COMPLAINT
(Prisoner)

CITY OF NEW YORK/UNKNOWN OFFICERS

NYC Health and Hospitals Corp.

MD FRANCES CHAPUT, RN MARIAMARQUEZ

Do you want a jury trial?

☒ Yes ☐ No

Write the full name of each defendant. If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section IV.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 6-22-16

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. LEGAL BASIS FOR CLAIM

State below the federal legal basis for your claim, if known. This form is designed primarily for prisoners challenging the constitutionality of their conditions of confinement; those claims are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a "Bivens" action (against federal defendants).

☒ Violation of my federal constitutional rights

☐ Other: _____

II. PLAINTIFF INFORMATION

Each plaintiff must provide the following information. Attach additional pages if necessary.

<u>Robert</u>	<u>D</u>	<u>Lurch</u>
First Name	Middle Initial	Last Name

State any other names (or different forms of your name) you have ever used, including any name you have used in previously filing a lawsuit.

3491503637

Prisoner ID # (if you have previously been in another agency's custody, please specify each agency and the ID number (such as your DIN or NYSID) under which you were held)

Manhattan Detention Center

Current Place of Detention

125 White Street

Institutional Address

<u>New York</u>	<u>NY</u>	<u>10013</u>
County, City	State	Zip Code

III. PRISONER STATUS

Indicate below whether you are a prisoner or other confined person:

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☒ Convicted and sentenced prisoner
- ☐ Other: _____

IV. DEFENDANT INFORMATION

To the best of your ability, provide the following information for each defendant. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are identical to those listed in the caption. Attach additional pages as necessary.

Defendant 1:	<u>CITY OF NEW YORK</u>		
	First Name	Last Name	Shield #
	<u></u>		
	Current Job Title (or other identifying information)		
	<u></u>		
	Current Work Address		
	<u></u>		
	County, City	State	Zip Code
Defendant 2:	<u>UNKNOWN OFFICERS</u>		
	First Name	Last Name	Shield #
	<u></u>		
	Current Job Title (or other identifying information)		
	<u></u>		
	Current Work Address		
	<u></u>		
	County, City	State	Zip Code
Defendant 3:	<u>NYC HHC</u>		
	First Name	Last Name	Shield #
	<u></u>		
	Current Job Title (or other identifying information)		
	<u></u>		
	Current Work Address		
	<u></u>		
	County, City	State	Zip Code
Defendant 4:	<u>FRANCE</u>		
	First Name	Last Name	Shield #
	<u>CHAPUT</u>		
	Current Job Title (or other identifying information)		
	<u>MEDICAL DOCTOR</u>		
	Current Work Address		
	<u>462 FIRST AVENUE</u>		
	County, City	State	Zip Code
	<u>NEW YORK</u>	<u>NY</u>	<u>10016</u>

V. STATEMENT OF CLAIM

Place(s) of occurrence: Bellevue Ed/Force Medication: Hallway outside CPEP

Date(s) of occurrence: December 26 2013 between hours of 8PM and 10PM

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and how each defendant was personally involved in the alleged wrongful actions. Attach additional pages as necessary.

-See Attached-

What

happened:

ON Dec 26, 2013 I had just moved to New York the day before on Christmas day. I had a few drinks at a friend's birthday party and went to go grab a bite to eat so I went down on a empty stomach.

Date:

3/26/2016

I went to a Chinese restaurant on the corner of West 24th Street on Ninth Avenue. When I got to the restaurant I ordered a meal that came up to \$6.94 roughly \$7. I handed the cashier a \$20 bill and waited for my meal to be prepared. When my food was done the cashier handed me my meal and tried to hand me three 1 dollar bills with change. I refused the change and took my meal. I then told the cashier you must be confused I handed you a \$20 dollar bill. She started yelling "no no you hand me 10 dollars I call police". I told her that's what you should do because I'm not leaving without my change. When the officers entered they asked me what's the problem? After I explained the situation to them the cashier said "he's lying". So I stated I have nothing to lie about run the camera's back. The officers looked at the cashier and told her she doesn't have to do that. Then they looked at me telling me to leave. I told the officers I'm not leaving run the camera's back I want my change I'm not rich. These cops then got aggressive grabbing their guns looking at me. I told them your going to kill me then kill me but I'm not leaving without my change. I further stated "I've done nothing wrong and I'm being treated unfairly". The officers then knocked my food out of my hand and said what your suicidal grabbing me. After I asked the officers what I'm under arrest for they said nothing. I later found out when the ambulance came I was going to the hospital. When I got to Bellevue the officers told the nurse give him something to calm him down he's acting up. I said miss I'm in your custody now your responsible for me these officers are lying don't listen to them. I then told her I went to a restaurant and they tried to cheat me out my change. The officer stated I didn't pay for my food. I told the nurse that's a lie to receive your food you have to pay and when the officers entered I was complaining about the amount of change the cashier tried to hand me. I told her I'm not arrested I'm here for complaining about my change and if I didn't

as tears started running down my face. The last time I was injected
 my airway started closing up and I had to struggle to keep breathing.
 The staff at Holly Hills Hospital thought I was acting up and watched
 me while they laughed as I almost choked to death. Thankfully
 one of the patients my only friend (a young white male from Durham,
 NC) told the staff "Sir I don't think he's acting he really can't
 breathe." By the time they injected me with something to counter
 the reaction I had been struggling to breathe for like a minute
 and a half. It was the most terrifying experience I ever had except
 for almost drowning to death when I was 6 or 7 years old at
 Sesame Street amusement park in Philadelphia, PA. So when I
 was told I would be given a drug that caused such a severe
 reaction I almost choked to death, I panicked. Of course, I
 was combative with the staff especially after I told the nurse
 the last time I was injected with the sedative I had such a
 bad reaction I almost died. yet she still deliberately administered
 the sedative after I informed her of my history with the drug. She
 wasn't even the first one to mention the drug. After she told
 the officers she would give me something to calm me down.
 I told her whatever it is don't give me Haldol I'm allergic and
 I told her to request my medical records via fax, so me
 being held down and given a sedative I'm allergic to against
 my will is barbaric. This is medical malpractice for a healthcare
 professional that receives a patient for a psychiatric evaluation
 and the patient informs the medical professional of a known
 drug allergy to a psychiatric medication. Yet the patient gets
 restrained, held down, and this medical professional administers
 the same drug the patient just told this professional their allergic
 to is unheard of. Regardless what an officer recommends he
 can't instruct a medical professional in regards to what medical
 treatment a patient should receive. Because that is not these
 officers field of expertise. These officers don't specialize in medicine
 their job is to enforce the law. If that was the case they would
 be allowed to administer sedatives to uncooperative persons in custody
 or being detained. So when these officers made the decision that the
 person they were dealing with needed medical treatment they

hospital staff except for this incident. Since then they even listed heldol as a known drug allergy. This is usually such a good hospital I don't understand why this nurse that night would ignore me informing her of a known drug allergy, have me relive the fears of being injected with a drug I had a near death experience with, and get the staff to forcefully hold me still so she can administer the sedative as I beg her not to informing her "I'm allergic I can die". I really don't understand why I was subjected to that type of treatment that night their usually such good people, and a great caring hospital. However I could've had a reaction and died. I should've of never forcefully been given a drug (sedative) I informed the nurse I was allergic to.

Signature

Robert Durich

Date:

3/28/2016

Claims against Parties

Date: June

1:16cv

12, 2016

HHC:

claim 1: Negligent training and supervision

claim 2: Negligent Infliction of Emotional Distress

MD France Chaput:

claim 1: violation of Substantial due Process / Involuntary commitment

claim 2: violation of Procedural due process

claim 3: Force medication / RN Maria D. Marquez administered medication and helped falsify records...

City of New York / Unknown Officers:

claim 1: violation of 4th amendment protection from unreasonable searches and seizures

claim 2: False arrest

Date: June

10, 2016

claims against HHC

Negligent training and Supervision claim

claim #1

against HHC

New York City Health and Hospital Corp. has a duty to train all employees that work for them. HHC knows that failure to do so can result in the injury or death of a patient. Employees should be trained in a vast range of medical safety procedures and medical procedures that will minimize a patient risk of dying due to being under the care of an unexperienced doctor. A doctor employment should also be terminated when they are found to be in violation of any of these safety procedures. Also all of the doctors actions should be scrutinize as they happen and under review to make sure the doctor is making decisions that are in the best interest of the patients in their care. To accomplish this goal if a doctor is performing surgery they should be assisted by a more experienced surgeon to prevent complications. When a doctor gets assigned to a patient that needs a decision about that patient before that order is executed it should be reviewed by a more experienced doctor. Just to ensure every safety procedure is being followed and none is overlooked. If a patient informs a hospital staff, nurse or doctor of a known drug allergy they have a duty to list that medication in that patient records as a known allergy if its not already listed. Furthermore prior to administering any medication whether it will be injected or taken orally, HHC has a duty and employees that work for them should be trained to ask a patient

to take place at one of their hospitals by one of their employees. The record shows this hospital was informed and no action was taken. GO to page 30 of 37 of the records which corroborates the allegations in the last sentence. That type of conduct should not be allowed to go on at all but to be reported yet not investigated is a whole another matter.

claim #2

Negligent Infliction of Emotional Distress

against

HHC

HHC hospitals has a duty to patients under their care being provided medical services from one of these hospitals to require their employees to find out either from the patient or that patient's records what that patient known allergies are before administering any medications or providing any meal. This duty owed to patients under their care ensure's in proper medical treatment is not given and any injury or death is not caused from preventable medical mistakes. When a patient informs a doctor they do not want to be medicated and there is no medical necessity to forcefully medicate; that patient should not be medicated. When a patient informs a hospital of a known allergy it should be a policy that it is included in that patient's records of known allergies and not given to that patient under no circumstances. To administer a medication that a patient informs the hospital staff is a known drug allergy is a breach of the hospital's duty and shows the hospital employees acted with deliberate indifference to the patient's physical health/well being. So when a hospital is informed of a known allergy, patient tells hospital staff he does not want to be medicated especially not medicated with a drug that person is allergic to, the doctors orders the patient to be placed in arm/wrist restraints, the person cries and begs the doctor not to medicate him with the medication they're allergic to. Fearing for his life, and the hospital still administers this drug. That

Date: Sun

10, 2016

claims against MO France

chapter

Note: medical records tailored to justify an involuntary commitment. Forcefully medicating. Records show the only facts describing patient's conduct prior to those acts being committed describes a patient that was in restraints from arrival to 30 minutes after being sedated not capable of physical harm because of restraints. Furthermore it only describes a patient being verbally abusive to NYPD officer yet not being homicidal or suicidal. It states in the record patient was violent but doesn't describe violent conduct. It states patient was threatening NYPD and staff but fails to state what threats were made. It doesn't even go in to detail about the substance of the statements that were allegedly made that got the patient categorized as violent. The patient's alleged conduct that was used to justify involuntarily committing the patient or sedating the patient is not supported by the facts.

claim #1 Violation of Substantive Due Process and not complying
 against with N.Y. Mental Hyg. Law § 9.40 standards for
 M.D. Francis Involuntary commitment
 chapter

An Involuntary civil commitment is a "massive curtailment of liberty," *Vitek v. Jones*, 445 U.S. 480, 491, 63 L. Ed. 2d 552, 100 S. Ct. 1254 (1980) (internal quotation marks omitted), and it therefore cannot permissibly be accomplished without due process of law, see *id.* at 492; *Connors v. Donaldson*, 422 U.S. 563, 580, 45 L. Ed. 2d 396, 95 S. Ct. 2486 (1975) (Burger, C.J., concurring); *Proctor Release v. Proctor*, 722 F.2d 960, 971 (2d Cir. 1983) ("Proctor Release"), as a substantive matter, due process does not permit the involuntary hospitalization of a person who is not a danger either to herself/himself or others.

Unless an assessment of whether or not an individual was dangerous to himself or herself was made on a reasonably competent basis, doctors cannot be found to have complied with either N.Y. Mental Hyg. Law § 9.39 (1985 and Supp. 1994) or the requirements of due process.

Due process does not require a guarantee that a physician's assessment of the likelihood of serious harm be correct or that the dangerousness to oneself or others requirement be manifested by a recent overt act. Due process does demand that the decision to order an involuntary emergency commitment be made in accordance with a standard that promises some

In wrist and ankle restraints and was given Haldol 5 mg Im and Ativan 2 mg Im. He cannot be interviewed at this time due to sedation.

Pg. 19 of 37

Violence risk factors: agitated, hostile. Recent violence

Pg. 20 of 37

aggressive ideation: violent thoughts

aggressive ideation (more): was threatening NYPD

Pg. 27 of 37

Evaluation (wp): Patient was not a danger to self or others

Now pursuant to N.Y. Mental Hyg. Law § 9.40(a) (2009), a comprehensive Psychiatric Emergency Program can retain a person for a period of seventy-two hours when the individual is alleged to have a mental illness for which immediate observation, care and treatment in such program is appropriate and which is likely to result in serious harm to the person or others. Under N.Y. Mental Hyg. Law § 9.39(a), a hospital can admit a person on that same basis and retain him for a period of fifteen days. N.Y. Mental Hyg. Law § 9.39(a) requires that this finding be made before the individual is committed for an extended period of time.

they were made but it was never described what was said.

Secondly, the patient was deemed not to be suicidal or homicidal but on pg. 17 of 37 Doctor filled in medical necessity blank stating Patient was a significant danger to self or others. It should be noted there was no observed behavior to support this claim. Other than threats that were made allegedly but never written down describing what was said.

However for the competent evidence requirement an expert should interpret these facts I guess.

Procedural due Process

Claim #2 The city doctor defendant violated my rights to due process
 against before being deprived of a Liberty Interest because they
 w/o. France Failed to comply with the requirement of M.H.L. §9.40

Chapter

The Second Circuit has recognized that involuntary commitment to a mental hospital cannot be executed by the state without due process of law (Project Release v. Prevost, 722 F.2d 960, 971 (2d Cir 1983) (citing O'Connor, 422 U.S. at 580 (Burger, C.J. concurring))

Since none of the relevant provisions of the M.H.L. was followed, a procedural due process violation has occurred.

Just as in the Substantial due process violation an expert shall determine if the M.H.L. requirements was met before a procedural due process violation can be decided.

However it clearly evident the requirements was not met.

The Patient was released in under 24 hours and it was determined after the Patient (myself) came out of seclusion by a second evaluation which was actually the first full evaluation that Patient was not a danger to himself or others. (Pg. 27 of 37) Patient was released after that.

claim #3

force medication

against

M.D. France

chaput/

R.N. Masia

Marquez

I WAS brought to Bellevue Ed in handcuffs. The officers that brought me there seized me for no reason. They did not have probable cause to believe I was a danger to myself or others to effect a warrantless seizure for the purpose of involuntary hospitalization. I was in the middle of reporting a crime to the police when police officers drew their weapon and arrested me for the purposes of involuntary hospitalization without probable cause. An ambulance was called and I was taken to the hospital. When I was brought in to the emergency dept. I was approached by an admitting psych doctor France Chaput while I was with the officer that was detaining me. The officer told the doctor I was brought to the hospital because I didn't pay for my food and was breaking things. I informed the doctor I paid for my food, I'm not in custody, I was only arrested because the police tried to intimidate me, and nothing is wrong with me. I want to go home. She asked him if I was under arrest and he said no. Then he said give him something to calm him down he's acting up. I told the doctor I'm not consenting to be given any medication. There's no reason to detain me, and I want to go home. I then asked the officer to unlash my handcuffs he stated no. I told him you do not have me under arrest but you don't want to unlash my handcuffs. He stated you don't tell me what to do. I called him a cuss word (a female dog). The doctor said

Holly Hill's hospital for my records. I told her I don't want
 any medication and do not give me Haldol. She said "I
 think we need ankle and wrist restraints for you since
 your denying medication. She told one of the nurses to
 tell the staff bring a hospital gurney with ankle/wrist
 restraints he's refusing medication. Now Psychiatric
 Patients have a "significant liberty interest in avoiding
 the unwanted administration of antipsychotic drugs under
 the DUC process clause of the Fourteenth amendment
 (See Washington v. Harper, 494 U.S. 210). This Doctor needs
 to obviously be retrained because once patients are
 admitted to the psych ward involuntarily we are treated
 like we have no rights. I told this doctor I'm not consenting
 to be given any medication and I'm definitely not consenting
 to taking medication I'm allergic to. Yet this doctor orders
 a gurney with ankle/wrist restraints, dis regards me
 stating I do not want to be medicated, Gets the staff
 to hold me still to administer medication to me against my
 will, and it's ok because I'm a mental health patient, now
 even though it's well-settled that a patient's liberty
 interest in not being involuntarily medicated is
 overridden in an emergency, where failure to medicate
 perc:ibly would result in a substantial likelihood of
 physical harm to that patient, other patients/or to
 staff members of the institution (See Odom v. Bellevue
 Hosp. Ctr, 93 Civ. 2794). Once a patient declines being
 medicated and they do not give consent to be medicated.
 Especially to a medication they are allergic stating I

Evidence of Falsified Medical

Desci: June 11,

Records

2016

Since it would be impossible to justify the medical necessity of forcibly medicating a patient in ankle/wrist restraints that's being restrained by those devices on a hospital gurney. Mainly because someone on a hospital gurney in ankle/wrist restraints couldn't possibly be a harm to anyone including themselves. For the reason that they no longer have the ability to use their hands and feet, it's being restrained. RN Maria Marquez had the audacity to change the order of events to help justify the medical necessity finding of the patient being a danger to self or others. She documented the patient was medicated first then placed in ankle/wrist restraints to justify the doctor, nurses, and staff actions, which forcibly medicating a patient already restrained in ankle/wrist restraints on a gurney would not be justified because that patient isn't capable of physical harm to anybody including themselves. So there wouldn't be a medical necessity and forcibly medicating that person would not be justified.

Evidence corroborating
my allegations

Pg. 18 of 37

History of Present Illness:

Date: June

11, 2016

Claims against City of
New York / unknown
officers

claim #1

Unreasonable Seizure claim

against

violation of Fourth

unknown

amendment

officers/

I was brought to Bellevue Ed in handcuffs. The officer

city of

that brought me there seized me for no reason. I was in

New York

the middle of reporting a crime to the police when I had

weapons drawn on me and handcuffed. when I informed the

officer I'm not guilty of any crime you cant take me to jail.

He stated "your right thats why your going to the hospital.

EMS was called and I was transported to the hospital.

A warrantless seizure for the purpose of involuntary

hospitalization may be made only upon probable cause,

that is, only if there are reasonable grounds for believing

that the person seized is dangerous to herself or others

(see *Anthony v. City of N.Y.*, 339 F.3d 129). Now somebody

that requesting their correct change back, tell officers

to review the cameras to prove he's telling the truth not acting

disorderly, officers state their not reviewing the camera tells him

to leave, Person states I need my change I'm not leaving, has weapons

drawn on him, his payed for food smacked out of his hand, and

arrested does not meet that criteria, a person should not

be considered a danger to himself or others because he request

his correct change from a restaurant he bought food from.

Furthermore when officers arrive the Person informs officers

that the restaurant has video surveillance and he wants

the officers to review the footage to prove he in fact handed

the cashier a \$20 bill. Officers telling that person to leave

and forget about \$10 worth of change is not justified.

Claim #2

False arrest

against

Unknown

officers/city

of New

York

at the time I was arrested I was told I was not under arrest for any crime. The officer told me I was going to the hospital even though I did not give consent to be taken to the hospital. A warrantless seizure for the purpose of involuntary hospitalization may be made only upon probable cause, that is, only if there are reasonable grounds for believing that the person is dangerous to himself or others. Now at the time I was arrested I was not trying to harm myself or anybody else. I was in the middle of reporting a crime, which officers tried to intimidate me not to report by drawing their weapons, and then arrested me because of it. Seizing and arresting a person for the purpose of bringing them to the hospital for involuntary commitment when they are not a danger to themselves or others is unconstitutional. It also constitutes a false arrest. at the time of my arrest the officers did not have probable cause to arrest for a crime or for the purpose of involuntary hospitalization.

To state a claim for false arrest under New York law, a Plaintiff must show that (1) the defendant intentionally confined the plaintiff; (2) the plaintiff was conscious of the confinement; (3) the plaintiff did not consent to the confinement; and (4) the confinement was not otherwise justified.

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

I Sustained Constitutional and Emotional Injuries as a direct result of these events.

VI. RELIEF

State briefly what money damages or other relief you want the court to order.

I'm suing for violations of my 4th and 14th amendments.
For the amount of \$10,000,000 (10 million Dollars).

VII. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I understand that if I file three or more cases while I am a prisoner that are dismissed as frivolous, malicious, or for failure to state a claim, I may be denied *in forma pauperis* status in future cases.

I also understand that prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions, 42 U.S.C. § 1997e(a), and that my case may be dismissed if I have not exhausted administrative remedies as required.

I agree to provide the Clerk's Office with any changes to my address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

<u>6/12/2016</u>		<u>Robert Lusch</u>
Dated		Plaintiff's Signature
<u>Robert</u>	<u>D</u>	<u>Lusch</u>
First Name	Middle Initial	Last Name
<u>Manhattan Detention Center 125 White Street</u>		
Prison Address		
<u>New York</u>	<u>NY</u>	<u>10013</u>
County, City	State	Zip Code

Date on which I am delivering this complaint to prison authorities for mailing: 6/12/2016



RECEIVED
SDNY PRO SE OFFICE

2016 JUN 22 AM 9:24

Robert Derek Luch Jr.
349 1505637
NYSD #12684777N
Manhattan Detention complex (MDC)
125 White Street
New York, NY
10013

Clerk
United States District Court
Southern District of New York
U.S. Courthouse
500 Pearl Street
New York, NY 10007

